Supreme Court, U.S.
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No. _____

In the
SUPREME COURT of the UNITED STATES

October Term, 1995

Richard D. Jacobs, Petitioner

v.

Kern Community College District,
Respondent.

On Petition For Writ of Certiorari
To The California Court of Appeal,
Fifth Appellate District

PETITION FOR A WRIT OF CERTIORARI

Richard D. Jacobs
Pro Se

Richard D. Jacobs
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In Pro Per Petitioner

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38 pp

QUESTION PRESENTED

Whether holding in propria persona litigants to the same exacting criteria of performance as that of a licensed attorney per California's Nelson v. Gaunt ruling creates a circumstance of unequal legal representation in conflict with the United States Supreme Court rulings on equal protection, due process and equal access to the legal system under the Fourteenth Amendment of the United States Constitution?

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Richard D. Jacobs respectfully petitions for a writ of certiorari to review the opinion of the California Court of Appeal, Fifth Appellate District that was upheld by the California Supreme Court's decision to deny the petition for review.

OPINIONS BELOW

The opinion of the Fifth Appellate District of the State of California (App., infra, 1a - 19a) citing the case Nelson v. Gaunt as precedent on the rights of in propria persona litigants in civil cases. The due process, equal access and equal protection clauses of the Fourteenth Amendment of the U. S. Constitution and the State Constitution of the State of California, Article 1, § 7 (b).

JURISDICTION

The judgment of the Court of Appeal of California, Fifth Appellate District, was entered on July 27, 1995. The Court of Appeal denied a timely petition for rehearing on August 28, 1995. On October 18, 1995, the Supreme Court of California denied a petition for review. The judgment became final as of October 18, 1995 because in California there is no right to Supreme

Court rehearing on the denial of a petition for review.

The jurisdiction of the Court is invoked under 28 U.S.C. § 1257 (a).

STATEMENT

Pro se Petitioner, RICHARD D. JACOBS, sued Kern Community College District in December 1992, claiming damages from the negligent supervision of instructor Wally Simmons and from a wheelbarrow accident that culminated from the negligence and did physically injure petitioner JACOBS. The lawsuit was begun in propria persona only after an exhaustive search by the petitioner for an attorney to handle his case. After JACOBS could not find an attorney, after using every means and method at his disposal, who would handle the case on contingency basis or accept even a monetary retainer he was "forced" to attempt to try the case himself or forever be excluded from receiving any kind of settlement or judgement for his injuries that were incurred due to the negligence of Kern Community College District employee, Wally Simmons.

The Respondent, Kern Community College District (KCCD), denied any liability and put forth a defense to limit the suit to only the wheelbarrow accident that occurred on October 17, 1991. The trial court judge, Stephen Gildner, agreed to

this severe limitation to petitioner's theories of liability at the Pre-Trial Conference which was held the afternoon of June 24, 1994.

Petitioner, JACOBS, objected strenuously to this as he did not have adequate notice from the Respondent of his in limine intention as the documents were only delivered to his residence the afternoon of June 22, 1994 and the Pre-Trial Conference was on June 24, 1994. Acting In Pro Per, JACOBS did not have adequate time to prepare a response to the in limine motion. The judge refused JACOBS' request for additional time to prepare a response to the in limine motion of the Respondent. Petitioner then asked the judge for a continuance of the trial date which was only a week away so he might have sufficient time to re-prepare his case before trial based on this severely changed single theory of liability. Judge Gildner refused, leaving the in pro per petitioner with only five court days to completely refocus and prepare a severely damaged case for jury trial. Petitioner asked Judge Gildner for equal treatment by pointing out that the Respondent has been previously given a continuance in March of 1994 and it was only fair that due to the in limine rulings and due to the fact petitioner was acting in pro per that he be given a continuance to prepare his case. Judge Gildner then denied JACOBS' request and chastised him by saying he would be given no special consideration based on his in pro per status. Even the counsel for the Respondent, Jeffrey Held, did not

object to Petitioner's request for a continuance and asked the judge to trail the case. Judge Gildner refused to trail the case. Petitioner submits that it was at this point of the state pre-trial prcceedings that the federal questions of equal access and due process to the legal system were first brought up. Petitioner simply asked for the same treatment as the attorneys for the defendant and it was denied (App., infra, 1a - 19a).

Acting In Pro Per, Petitioner tried to pull together his case but could not adequately or effectively present his full case in court due to the denial of the continuance and due to several prejudicial additional rulings of Judge Gildner as outlined in Petitioner's Opening Brief to the Appellate Court, his Request for Rehearing and his Petition for Review to the California Supreme Court.

The case was presented to a duly impaneled jury of the Kern County Superior Court, Department 12, beginning on Tuesday, July 5, 1994. The jury having been selected, evidence presented on behalf of both sides. Closing arguments and charging of the jury occurred on July 7, 1994 The jury returned a verdict in favor of respondent, Kern Community College District, on July 7, 1994 and against the petitioner. Based on the jury verdict in the case, the Court ordered Judgement entered on the special jury verdict in favor of the respondent The respondent, Kern Community College District, was therefore determined to be the prevailing

party and at their request was awarded costs of suit in accordance with Rule of Court 870. A Notice of Entry of Judgement was served on the petitioner on August 3,1994 in the amount of $4,445.87.

On September 13, 1994 petitioner filed a Notice of Appeal to the Court of Appeals from the Judgement entered July 22, 1994 in Department 12 of the Superior Court of the State of California for the County of Kern and from a Notice of Entry of Judgement that was served by Respondent on August 3, 1994. As stated earlier in the jurisdiction section of this writ, the judgement of the Court of Appeal of California, Fifth Appellate District, affirming the judgement with costs to respondent was entered on July 27, 1995. The Court of Appeal denied a timely petition for rehearing on August 28,1995. Petitioner had specifically cited the federal questions in his request for rehearing by citing that reliance on Nelson V. Gaunt was a violation of the equal access, due process and equal protection under the Fourteenth Amendment to the U . S. Constitution. On October 18, 1995, the Supreme Court of California denied a petition for review. Petitioner had also specifically brought up the same above mentioned federal questions in his request for review to the State Supreme Court. The judgement became final as of October 18, 1995.

A. OVERZEALOUS INTERPRETATION OF THE NELSON V. GAUNT RULING BY CALIFORNIA COURTS VIOLATES LITIGANTS RIGHTS TO EQUAL ACCESS TO THE LEGAL SYSTEM AS INTERPRETED BY THE U. S. SUPREME COURT UNDER THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION.

In their opinion in this case the Fifth Appellate Court quoted Nelson as precedence that:

> "When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys [citations]. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney [citation]." (Nelson v. Gaunt (1981) 125 Cal. App. 3d 623, 638 - 639, fn. omitted.)

Strict adherence to this case is unequal treatment of a reverse discrimination nature and therefore no longer is constitutional. This type of unfair and prejudicial ruling actually deprived the in pro per plaintiff of his rights to equal access, equal protection and due process under the Fourteenth Amendment of the U. S. Constitution.

The Supreme Court now has the opportunity to review the broad issue of whether the

ruling in Nelson is still valid as it is being interpreted and applied in in pro per cases. It also, has the chance to improve our system of justice for litigants who must struggle on their own to bring their actions to court to try to obtain relief for injuries and from wrongs done to them.

The Supreme Court has an opportunity in Jacobs v. Kern Community College District to decide if this ruling is truly providing in pro per litigants with equal opportunity to fully develop and present their cases against fully trained and skilled licensed attorneys - Or, is this ruling being used by trial court judges in California to clear their calendars by discriminating against and eliminating these in pro per litigants from their lawful due process and equal access rights to the legal system of this nation per the Fourteenth Amendment to the U. S. Constitution in that:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"

Holding an untrained citizen to the same high standards of performance as a licensed attorney creates an unreachable standard of performance for the in pro per litigant. This in effect denies them equal access to the legal system on a basis in which they can hope to successfully compete and makes the in pro per system as interpreted by California courts intrinsically unfair and hence unconstitutional.

This issue is an important one as a citizen should have the right to seek regress for injuries through the court system. Allowances must be made for in pro per litigants to adequately prepare for trial by allowing them continuances as long as the statutory timeframes as still adhered to.

According to the Constitution of the State of California, Article 1, § 7 (b):

> "A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked." [As amended November 6, 1979.]

With this in mind, why is it that criminals in California are assigned legal help. Why can't there be a system of attorneys to assign to personal injury

litigants on a for fee basis when the litigant can't find one on his own. There are simply too many intricate and technical details to handle while an in pro per litigants are involved in an intensely personal and emotional lawsuit. Then on top of that to be held in each and every aspect of the entire proceedings to the exact same performance standard of a trained attorney simply creates an unequal situation. No non-attorney could possibly do as well as an attorney. This is therefore inequality at it's most basic level. As discussed in **Constitutional Law § 514 - due process--fundamental fairness:**

> " 3. Due process is not a technical conception with a fixed content unrelated to time, place, and circumstances, but rather expresses the requirement of fundamental fairness; in applying the due process clause of the Fourteenth Amendment, one must discover what fundamental fairness consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake."

California grants the privilege of an attorney to criminal defendants but makes no such allowance or consideration for civil litigants. This is unequal and unfair treatment for citizens. Even though no criminal conviction hangs in the balance, a civil litigant who cannot find monetary

justice in the courts due to the lack of trained legal counsel is also doomed to the prison of poverty, disability and hopelessness. Who can say which is worst?

B. IN PROPRIA PERSONA LITIGANTS ARE ROUTINELY DENIED THE SAME PRIVILEGES AS ATTORNEYS WHICH IS A VIOLATION OF EQUAL ACCESS AND EQUAL PROTECTION GUARANTEES OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.

The second major area of conflict in the Fifth Appellate District's opinion was their siding with the trial court judge in not allowing JACOBS the use of his partner to help him present his side of the case in court in a reasonable and thoughtful manner. JACOBS spouse/partner attempted to read his own pre-prepared questions to him in court as a way of presenting his testimony in a way the jury could easily understand. However JACOBS was denied this right to use his partner as she was not an attorney. JACOBS was acting in pro per and his spouse should have accorded the same privilege. This is discrimination and a violation of equal access. Attorneys are permitted to use their law partners to help try their cases. If I am to be held to the same strict rules of performance as attorneys under Nelson, then I should be accorded the equal privileges of attorneys or this is a conflict with and a violation of both the California Constitution Article

1, § 7 (b) as was stated earlier and Equal Protection and Equal Access provisions of the Fourteenth Amendment of the U. S. Constitution. The Appellate Court cannot have it both ways against the in pro per litigants. They need to decide which way is it going to be and allow all privileges and require strict adherence to the rules or not. This is a clear conflict that needs to be ruled upon.

REASONS FOR GRANTING THE PETITION

I. The first reason to grant this Writ of Certiorari is to rule on the clear conflict between decisions made by the United States Supreme Court upholding citizens rights to equal access, equal protection and due process under the Fourteenth Amendment of the U. S. Constitution and the California Appellate Court citing of the case Nelson v. Gaunt as a precedence case that in effect negates in pro per litigants Fourteenth Amendment rights. Either civil litigants have equal rights. equal access and due process or they do not. If certiorari is granted petitioner will elaborate in detail on the merits of this core reason for review.

II. Nelson v. Gaunt must be corrected so that personal injury litigants are never forced to try to handle their own cases as this petitioner was in July of 1994.

This situation puts the litigant into an impossible, awkward court action that can only bring negative judgments against the very person who is honestly seeking monetary relief from damages done against him. The Nelson ruling works to completely eliminate any chance of a positive outcome for the in pro per litigant who wants an attorney but cannot find one.

This situation is also needing correction as it gives criminal defendants priority access to attorneys over citizens seeking regress for injuries done to them. In other words, it rewards the wrong class of citizenry. Citizens who are injured due to the negligence of others are surely victims who need protection just as much if not more than accused criminals.

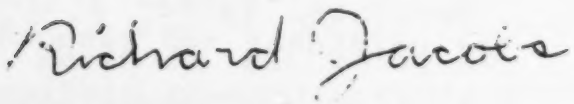
III. An in pro per litigant has few if any resources to call upon in his fight for justice in the courtroom. Lawyers can access their partners for help and assistance but in pro per litigants cannot. This must be reviewed as it further penalizes the poor in pro per litigant who is already battling against the odds to seek monetary justice and then he cannot even use the few resources he has to help. He has basically been stripped naked before the court and then told he must strictly adhere to all the other rules that the attorneys must adhere to. But, he cannot have any of the privileges. This is clearly unequal treatment and unequal access. This merits review.

CONCLUSION

For the reasons set forth, it is respectfully requested that this Petition for a Writ of Certiorari should be granted and that the Court review the issues set forth herein.

Dated: February 14, 1996

Respectfully submitted



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APPENDIX A

NOT TO BE PUBLISHED IN OFFICIAL REPORTS
COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT
RICHARD D. JACOBS,
Plaintiff and Appellant,
v.
KERN COMMUNITY COLLEGE DISTRICT,
Defendant and Respondent.
F022344
(Super. Ct. No. 222231)
OPINION
Fifth Appellate District
Filed July 27, 1995
Kevin A. Swanson, Clerk

APPEAL from a judgment of the Superior Court of Kern County. Stephen P. Gildner, Judge.

Richard D. Jacobs, in pro per., for Plaintiff and Appellant.

Robinson, Palmer & Logan and Jeffrey Held for Defendant and Respondent

Richard D. Jacobs appeals from a defense judgment in his personal injury action following a jury verdict finding that the incident in which he claimed to have been injured did not occur. None of his claims of trial court error have merit. Accordingly, we affirm.

PROCEDURAL HISTORY

On April 10, 1992, Jacobs filed with the Kern Community College District a "Claim for Damages" allegedly "based upon events which occurred on or about October 17, 1991." The claim asserts Jacobs was enrolled at

Bakersfield Community College in a construction class conducted by Wally Simmons. Jacobs had been instructed to remove debris from the remodeling site, along with an employee of Bakersfield College. "An overloaded and extremely heavy wheelbarrow was dropped by the Bakersfield College employee and landed on [Jacobs]." This resulted in "serious and possibly permanent" damage to his knees and back, extensive medical bills, severe stress and anxiety, loss of credits and fees for the construction course, and a delay in obtaining a contractor's license.

On December 4, 1992, Jacobs filed a complaint against the college district including causes of action for general negligence and premises liability. The negligence claim asserted that while taking a course at Bakersfield Community College, Jacobs was instructed to remove debris from a remodeling site. While he was doing so, an employee of Bakersfield Community College dropped a heavy wheelbarrow that landed on Jacobs, causing injury. The premises liability claim alleged that the injury was caused by the college's maintenance of a dangerous condition on its property.

The district answered with a general denial and various affirmative defenses.

On June 21, 1994, the district filed and served its "Notice of Hearing of Motion in Limine and Memorandum of Points and Authorities in Support Thereof." Significant to this appeal was the district's motion

that Jacobs be barred from referring to, or introducing evidence about, "any theory of liability other than that advanced in the tort claim." According to the motion, Jacobs had, in his settlement conference statement, referred to theories of liability not raised by the tort claim or complaint.

The in limine motions were heard at the pretrial conference on Friday, June 24, 1994.[1] The motion to limit the scope of the evidence was granted. According to the clerk minutes, Jacobs orally moved for a continuance of trial.[2] The motion was denied and the July 5, 1994, trial date was confirmed.

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[1] The minutes show a date of June 27. Both parties suggest this date reflects the date of the minute order, but not of the date of the pretrial conference. Neither party requested that the reporter's transcript of the hearing be included in the appellate record.

[2] The record does not disclose the grounds on which the continuance motion was made. Jacobs includes as an appendix to his opening brief a self-styled "accurate, verbatim transcription" of his oral motion. Because the appendix is neither part of the record on appeal nor a proper subject for judicial notice, we must ignore it.

Trial commenced with jury selection on July 5, 1994, and concluded with a defense verdict on July 7. In its verdict form the jury found there was no incident on or about October 17, 1991, in which Jacobs was injured using a wheelbarrow at Bakersfield College.

Judgment was thereafter entered and Jacobs filed his timely appeal.

FACTS

Jacobs testified on his own behalf. In the fall of 1991, Jacobs was enrolled at Bakersfield Community College in the 10-unit Construction 5A class taught by Wally Simmons. The class did practical remodeling work at on-campus facilities. There were seven students in the class.

Debris from the remodeling projects was typically transported in a "large pneumatic wheelbarrow" from the job site to a truck driven by Roman Lara, which had a gate lift. The lift did not lower all the way to the ground, stopping about a foot above, and in order to get the wheelbarrow onto the lift, Simmons directed his students to raise the front wheel by pushing down on the handles, swinging the wheel onto the lift, then (presumably) swinging the rest of the wheelbarrow onto the lift using the wheel as a pivot.

Jacobs suggested to Simmons that it would be safer to use a ramp to get wheelbarrows onto the truck lift, and Simmons's answer

was "no." Jacobs then reported the perceived safety hazard to his counselor, Lynne Hall, who told Jacobs she would speak to Simmons.

During the session on Thursday, October 17, 1991, Simmons announced there would be no class meeting on Friday, but that class would work on Saturday. Toward the end of class of Thursday, Jacobs took a wheelbarrow-load of debris to Roman Lara's truck and asked another student, Rene Canez, to load it. Canez attempted twice to get the wheelbarrow onto the lift, without success. Jacobs and Lara approached the wheelbarrow from either side and helped Canez by lifting the wheelbarrow As the wheelbarrow reached the edge of the lift, Lara apparently let go of his side. The wheel was not fully on the lift, and the wheelbarrow rolled backward, with Jacobs still holding it.

Within a few seconds the three men attempted to load the wheelbarrow onto the lift, and this time succeeded. After getting the wheelbarrow onto the lift, Jacobs felt "a cold, electric pain" in his right knee; his back and hip were also hurting.

Jacobs saw Dr. Farber, who examined his leg, hip, and lumbar spine and suggested that Jacobs consult an orthopedic surgeon. Jacobs then went to Dr. Brenner, who conducted an MRI (magnetic resonance imaging) procedure on Jacobs's knee and told Jacobs that he should have arthroscopic surgery or his "knee would be fused solid, no movement." Dr. Brenner suggested that the

surgery be delayed for a couple of months because Jacobs had just had a hemorrhoidectomy. Jacobs never did have the surgery.

Jacobs's wife, Deana Baird, testified on his behalf. She confirmed various aspects of his testimony.

Jacobs also called Douglas Nelson of Data Manufacturing, the company which had apparently installed the truck lift. According to Nelson, the lift in question "would clear the ground at approximately 18 inches." A lift could have been installed that would go to the ground level, and Nelson would have recommended such a lift had a customer informed him that the lift would be used for wheelbarrows.

Jacobs also called all but one of the other students in the Construction 5A class. None of those five witnesses (Ernest Taylor, Nicholas Hernandez, Sheree Neeley, Jane Tucker, and Rene Canez) remember any incident as described by Jacobs or knew of any accident involving Jacobs in the Construction 5A class.

Roman Lara, an employee of the college district who drove the truck in question, testified he had no recollection of Jacobs's accident. He operated the lift from outside the truck with a view of the lift area, and he never saw any student get hurt while using a wheelbarrow. Lara testified the lift went to within three inches of ground level.

Walton Simmons was the Construction 5A instructor. He had no involvement in the purchase of the lift in question. No student was required to operate the wheelbarrow. Simmons had no difficulty loading wheelbarrows onto the lift: "... I could put them up by rocking back on the legs and pivoting the wheel on it and lift them by myself, so I figured people like Rene [Canez] and some of the others that were bigger than I was could do the same thing without strain." He recalled the lift as getting to within four or five inches of the ground. Simmons had no recollection of Jacobs or any other student suggesting a ramp. He believed using a ramp would have been more hazardous that the method he described because the truck moved, and there was no way to anchor the ramp.

Simmons was not personally aware of the purported accident. To the best of his recollection, Simmons was unaware of Jacobs's claimed injuries until the Monday following October 17, when Jacobs came to class on crutches. Simmons asked Jacobs if he had checked with the nurse or seen a doctor. "And I said till you got squared away you weren't going to work in class, that you can stay and watch, but not work." Simmons had no recollection of class on Friday, October 18 being rescheduled for Saturday, October 19. The only Saturday sessions were voluntary.

Jacobs was examined by Dr. Michael Tivnon, an orthopedic surgeon retained by the defense. He noted that Jacobs was walking

with a cane in his right hand, inconsistent with the right knee injury of which Jacobs complained. Tivnon testified that when asked about his injury, Jacobs told him that he had felt something "give" in his knee while walking over a pile of lumber. He also described an incident in which he and a fellow student were lifting a wheelbarrow; the other student let go, and the wheelbarrow hit Jacobs's knee. Tivnon recalled no complaint of hip injury.

Dr. Tivnon reviewed Jacobs's medical history and performed various direct tests on and observations of Jacobs' knee. In short, Tivnon concluded that Jacobs's knee, which certainly not in pristine condition, had suffered no recent injury as of late 1991 when X-rays and an MRI were taken.

DISCUSSION

I. The record does not show the trial court abused its discretion in refusing to grant Jacobs a continuance of the hearing on the in limine motions and/or of the trial date.

Jacobs contends the trial court abused its discretion by not continuing the hearing on the district's pretrial in limine motions. He cites the Kern County Superior Court's rules pertaining to pretrial conferences which require the service of in limine motions be made at least five days prior to the pretrial conference. The record

reveals that the district's moving papers were served by mail on June 21, 1994, for hearing at the pretrial on June 24.

Jacobs's argument fails because the record does not show he objected to the short notice, requested a continuance of the hearing, or invoked the local court rules at any time prior to this appeal. Additionally, we note that the rules also provide: "Nothing in these rules shall prevent a court, in an individual case, from issuing an exception order based on a specific finding that the interests of justice require a modification of the routine processes as prescribed by these rules." (Kern County Super. Ct. Rules, Appen. "A" [Rules for the Administration of Civil Litigation].) Jacobs has not demonstrated that the trial court did not properly act pursuant to this provision.

Jacobs also claims the court abused its discretion by denying his oral motion to continue trial. Again, the formal record fails to reflect what showing was made in support of this motion.

It is well settled that the party challenging a judgment has the burden of showing reversible error by an adequate record. (Ballard v. Uribe (1986) 41 Cal. 3d 564, 574.) Jacobs has not done so here.

Even if we were to assume, however, that the court erred in refusing to continue the trial, that would not end Jacobs's

burden. "Consistent with the fundamental rule of appellate procedure that the appellant must make an affirmative showing of error by an adequate record [citations], it is incumbent upon the appellant to demonstrate that the error was prejudicial under the particular facts in evidence by bringing before the reviewing court a sufficient record showing that absent the error, there was a reasonable probability of a finding in appellant's favor [citations]." (Kostecky v. Henry (1980) 113 Cal. App. 3d 362, 374; see Wilkinson v. Bay Shore Lumber Co. (1986) 182 Cal App. 3d 594, 599-600.)

Here, Jacobs has failed to show that, had the court granted a continuance, he could either have made a convincing argument for inclusion of the areas of inquiry barred by the court via the in limine ruling, or that he could have assembled a stronger case in his favor within the constraints imposed by that ruling.

II. The trial court did not abuse its discretion in limiting Jacobs's theory of liability.

The district's in limine motion sought to exclude certain matters raised in Jacobs's settlement conference statement, matters not within the scope of the tort claim or complaint. The tort claim simply asserted that a college district employee had dropped an overloaded wheelbarrow which landed on

Jacobs, and the accident was a result of inadequate supervision by, and negligence of, instructor Simmons. The complaint contained similar allegations, asserting failure to supervise employees and premises liability. However, according to the motion in limine, the settlement conference statement expanded significantly on those allegations.

> "...In that Settlement Conference Statement, the plaintiff says he was repeatedly singled out by the Bakersfield College instructor to perform repetitive heavy labor tasks while other students benefited from valuable classroom instruction, that the plaintiff complained about this exclusion to his school counselor and was given assurances that the problem would be taken care of, and that, during one of those episodes of classroom exclusion, the plaintiff was doing demolition removal work pursuant to the disparate treatment. The plaintiff also urges that he was given a purely retaliatory unwarranted failing mark. None of these claims of disparate treatment are made or reflected in the tort claim, they cannot now be advanced, and the plaintiff must be limited to the arguments advanced in his tort claim, ..."

Although he claims the court's granting of the motion was error, Jacobs makes no

coherent argument supporting his claim. He does not point to a single evidentiary ruling in which matters within the scope of the tort claim were erroneously excluded.

It is plain that a claim under the Tort Claims Act defines and limits the scope of the issues presented at trial.

> "This proposition reflects that line of decisions, among them the recent case, State of California ex rel Dept. of Transportation v. Superior Court (1984) 159 Cal. App. 3d 331 [], which recites the rule that 'Courts have consistently interpreted the Tort Claims Act to bar actions alleging matters not included in the claim filed with the public entity.' (id., at p. 336.) In other words, the factual content of the plaintiff's claim was viewed by the trial court as operating to proscribe the limits of any later action for which filing the claim is a precondition." (Williams v. Braslow (1986) 179 Cal. App. 3d 762, 769-770.)

The fact that Jacobs did, in his tort claim, cite as an element of damages his [l]oss of credit for the ten unit class" does not mean he was entitled to contend he was barred from the class or otherwise discriminated against when he made no such factual allegation in the claim or in his complaint.

III. The trial Court did not err in refusing to allow Jacobs to question prospective jurors.

During the jury voir dire, the court barred Jacobs from inquiring of panelists about "where they were raised, or anything about their parents." Jacobs cites this ruling as an abuse of discretion.

> "...[Code of Civil Procedure] section 222.5 grants counsel in a civil trial the right to conduct oral examination of prospective jurors to enable them to exercise both peremptory and 'for cause' challenges. The scope of such examination may be restricted by the trial court within reasonable limits that allow counsel liberal and probing examination to discover bias and prejudice within the circumstances of each case." (Bly-Magee v. Budget Rent-A-Car Corp. (1994) 24 Cal. App. 4th 318, 324.)

The question presented, then, is what limits on voir dire may reasonably be imposed by the trial judge.

"...California has long permitted examination of prospective jurors in order to determine whether a basis for challenge for cause exists. Such examination is not for the purpose of determining the exercise of peremptory challenges [citations],

although occasional dictum has loosely supported such a purpose [citation]." (Rousseau v. West Coast House Movers (1967) 256 Cal. App. 2d 878, 822.)

Jacobs has failed to show that the narrow questions prohibited by the trial court could in any way have exposed potential grounds for a challenge for cause.

IV. The trial court did not improperly deprive Jacobs of the right to present his side of the case.

In presenting his own testimony, Jacobs proceeded by taking the stand and having his wife, Deana Baird, read questions to him from the counsel table. The defense did not object to this procedure. However, when Baird published to the jury a photograph not yet admitted into evidence, the court called a sudden halt to the procedure, pointing out to Baird that she was in effect practicing law without a license. Thereafter, from the witness stand Jacobs asked himself questions and answered them.

On appeal, Jacobs contends that the court's ruling prejudiced his ability to present his case to the jury.

Jacobs cites no statute or case law authorizing a party in propria persona to have a nonattorney ask questions while the party takes the witness stand, and we know of none.

Jacobs took the risk of making presentation of his case awkward when he elected to proceed in propria persona.

> "When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys [citations]. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney [citation]." (Nelson v. Gaunt (1981) 125 Cal. App. 3d 623, 638-639, fn. omitted.)

V. The trial court did not deny Jacobs the opportunity to object to defense questions.

During the cross-examination of Jacobs, the instant exchange took place:

> "Q Do you recall that when your deposition was taken in this case you stated that your right knee seemed to be improving?
>
> "A Well, that would be saying that it was bad. I was getting in shape all over, you know from working.
>
> "Q Well, on page 33, of your deposition at line 23 you testified, and I am quoting you:

"'My right knee seemed to be improving,' end quote.

"Do you remember giving that testimony?

"A Only because you asked me or the deposition person from your office, Christine Hughes, what's her name, Christine Jamison, she asked me only about the right knee as you are doing here.

"Why don't you just ask me in general in both legs, was I getting more in shape, and I was.

"THE COURT: Mr. Jacobs--

"THE WITNESS: I was improving.

"THE COURT: Mr. Jacobs--

"THE WITNESS: Your Honor--

"THE COURT: Listen to the question. If it is an improper question, I will take care of it.

"THE WITNESS: Okay, Okay. Thank you" (Italics added.)

On appeal, Jacobs contends that the judge "told me that I could no longer object to any of the defense attorney's questions, and that he would tell me when a questions [sic] was objectionable." The cited portion of the record does not indicate that the court had any such intention. In fact, it does not appear that Jacobs so understood

the court's statement, as he continued to object, after a fashion, to the cross-examination:

> "Q Why didn't you mention the involvement of a student or of [Rene Canez] in your claim presented to the College?
>
> "A You pencil whip me. I decline to answer that on the ground it tends to incriminate me under the Fifth Amendment or something."

Jacobs subsequently objected to the defense examination of other witnesses as well.

Even if we interpreted the trial court's statement as a general ban on objection by Jacobs, in order for him to show prejudicial error he would have to demonstrate that he was forced to answer questions that would have been the subject of a proper (and successful) objection. He makes no such showing.

VI. Extrinsic Evidence

Filed with Jacobs's waiver of oral argument on July 3, 1995, was a document entitled "APPELLANT'S SUPPLEMENT POINTS." Via this document, Jacobs offers this court evidence never presented to the court below, comprised of a newspaper clipping, a photograph, and an unsworn witness statement (apparently by Jacobs's former brother-in-law). He also offers the purported record of the

MRI, a record he claims was rejected by the court below for lack of foundation. The district has objected to the proffered evidence.

Jacobs does not cite, nor do we find in the record, any attempt to offer the MRI report below.[3] In any event, Jacobs concedes the MRI report was not admitted for lack of proper foundation; we find nothing indicating a proper foundation for the report was laid, either at trial or in this court.

Jacobs cites no authority supporting his effort to present evidence for the first time after briefing was completed in the appellate court, and offers no explanation as to why it could not have been offered at trial. Consequently, we do not consider it.

> "California Rules of Court, rule 23(b) and Code of Civil Procedure section 909 authorize the appellate court to take evidence relating to any facts occurring at any time prior to appeal. However, the rule does not contemplate the reviewing court should take original evidence to reverse a judgment (First Nat. Bank V. Terry (1930) Cal. App. 501, 509 []) and is not available where there is no good cause for the unavailability of the evidence below...." (DeYoung V. Del Mar Thoroughbred Club (1984) 159 Cal. App. 3d 858, 863, fn.3.)

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[3] When Jacobs attempted to testify about the contents of the report, a foundation objection was sustained.

DISPOSITION

Judgment affirmed, Costs to respondent.

"s/ Thaxter "
Thaxter,J.

WE CONCUR:

"s/ Ardaiz "
Ardaiz,P.J.

"s/ Dibiaso "
Dibiaso,J.

APPENDIX B

IN THE COURT OF APPEAL
OF THE
STATE OF CALIFORNIA

IN AND FOR THE
FIFTH APPELLATE DISTRICT
F022344
(Super Ct. No. 222231)

RICHARD D. JACOBS,
Plaintiff and Appellant,

v.

KERN COMMUNITY COLLEGE DISTRICT,
Defendant and Respondent.

FIFTH APPELLATE DISTRICT
FILED AUGUST 28, 1995
Kevin A. Swanson, Clerk

The petition for rehearing filed by appellant in the above entitled action is DENIED.

Date: Aug 28, 1995 "s/ Thaxter"
Thaxter, J.

I CONCUR:

"s/ Dibiaso"
Dibiaso, Acting P.J.

APPENDIX C

FIFTH APPELLATE DISTRICT
No. F022344
S048693

IN THE SUPREME COURT OF CALIFORNIA

RICHARD D. JACOBS,
Appellant,

v.

KERN COMMUNITY COLLEGE DISTRICT,
Respondent.

SUPREME COURT
FILED October 18, 1995
Robert Wandruff, Clerk
H. Cruz
Clerk

Appellant's petition for review DENIED.

LUCAS
Chief Justice